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MALAYSIA DEBT VENTURES BHD

v.

CHEAH YEW KEAT

B

HIGH COURT MALAYA, KUALA LUMPUR
HASNAH MOHAMMED HASHIM J
[SUIT NO: 22NCC-1772-10-2011]
28 JANUARY 2013

C ***CIVIL PROCEDURE:*** *Pleadings - Facts not pleaded - Loan agreement - Approval based on declaration made in statutory declaration - Fraudulent misrepresentation in loan application - Reliance on misrepresentation caused loss and damages - Whether necessary particulars of alleged fraudulent misrepresentation pleaded - Whether fraudulent*
D *misrepresentation mere inference - Rules of Court 2012, O. 18 r. 12(1)*

CONTRACT: *Misrepresentation - Fraudulent misrepresentation - Loan agreement - Whether there was fraudulent misrepresentation in application for loan - Whether there was reliance on misrepresentation - Whether*
E *misrepresentation particularised in pleadings - Whether claim proven on balance of probabilities*

The defendant, a director of Digital Integrated System Sdn Bhd ('the company') had applied for a loan from the plaintiff and for the purpose of obtaining the loan, the defendant made a statutory
F declaration declaring the accuracy and truthfulness of the documents furnished or to be furnished by or on behalf of the company. Relying on the statutory declaration, the plaintiff approved the loan application in the sum of RM10 million and extended the letter of offer to the company. *Via* a supplementary
G letter of offer, the plaintiff further agreed to increase the loan to RM20 million. In the present claim, the plaintiff alleged that the defendant had fraudulently misrepresented that the company was financially sound when it applied for the loan. The plaintiff claimed to have suffered losses and damages as a result of the alleged
H misrepresentation. The defendant argued that the plaintiff did not plead the necessary particulars of the alleged fraudulent misrepresentation as required by O. 18 r. 12(1) of the Rules of Court 2012 ('ROC'). It was further averred that the plaintiff had instead made an inference of the fraudulent misrepresentation.

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Held (dismissing claim with costs):

(1) In its statement of claim, the plaintiff merely made a general statement but failed to particularise the alleged misrepresentation. Instead, the plaintiff only made reference to the statutory declaration by the defendant. (paras 24 & 25)

(2) It is well-settled law that fraudulent misrepresentation or fraud must not only be pleaded but also particularised in the pleadings. The plaintiff failed to particularise the information, documents and oral representations that they had relied on when considering and finally approving the loan. The plaintiff's witnesses also failed to explain, in their evidence, on the information or the documents that they had relied on, in inducing them to approve the loan. (paras 25 & 26)

(3) The plaintiff had not proved its case on a balance of probabilities. From the evidence adduced, both oral and documentary, it was clear that there was not an iota of evidence to show any taint of fraudulent misrepresentation by the defendant. (paras 29 & 30)

Case(s) referred to:

Balakrishnan Devaraj & Anor v. Admiral Cove Development Sdn Bhd [2010] 7 CLJ 152 CA ***(refd)***

Chu Choon Moi v. Ngan Sew Tin [1985] 1 LNS 134 FC ***(refd)***

Frederick Ting Hua San v. Ban Guan Thye Sawmill Sdn Bhd [2005] 5 CLJ 477 HC ***(refd)***

Lee Cheong Fah v. Soo Man Yoh @ Saw Man Yoke [1996] 2 BLJ 356 HC ***(refd)***

Saminathan v. Pappa [1980] 1 LNS 174 PC ***(refd)***

Sim Thong Realty Bhd v. Teh Kim Dar [2003] 3 CLJ 227 CA ***(foll)***

Legislation referred to:

Rules of Court 2012, O. 18 r. 12(1)

For the plaintiff - Nor Shahadah Saari (Noor Aisha Apisah & Nurasyikin Ja'alam with her); M/s Shukor Baljit & Partners

For the defendant - Khor Kheng Loon (Malkit Singh & Benjamin Khor Wye Jin with him); M/s Khor, Ong & Co

Reported by Najib Tamby

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JUDGMENT

Hasnah Mohammed Hashim J:

The Claim

B **[1]** The plaintiff's claim against the defendant is for fraudulently misrepresenting that the company the defendant was representing was financially sound when it applied for the loan from the plaintiff,

C

> Bagi tujuan untuk mendapatkan pinjaman tersebut, Defendan yang mewakili Peminjam membuat representasi secara fraud bahawa Peminjam berada di dalam kedudukan kewangan yang kukuh dan semua surat cara yang dikemukakan untuk menyokong permohonan tersebut adalah benar.

D **[2]** As a result of the alleged false statements made in the statutory declaration the plaintiff suffered loss and damages as follows:

> Setakat 22.8.2011 jumlah yang terhutang adalah seperti berikut:
>
> E
>
> BUTIR-BUTIR
>
> (a) Penghakiman atas Prinsipal setakat 31.10.2010 ...

Background

F **[3]** The defendant is a director of a company known as "Digital Integrated System Sdn Bhd. Sometime in 2007/2008 the defendant applied for a loan from the plaintiff. For the purpose of obtaining the loan the defendant made a statutory declaration on 12 November 2011 as follows:

G

> I, Cheah Yew Keat (IC No 570406-09-5017) a director of Digital Integrated System Sdn Bhd (385791-X) a company incorporated in Malaysia and having its registered office at 58A-1, Jalan Cantonment, 10250 Penang (the "Company") DO HEREBY SOLEMNLY AFFIRM AND DECLARE as follows:
>
> H
>
> 1. ...
>
> 2. ...
>
> 8. That all information, documents and oral representations
> I furnished or to be furnished by or on behalf of the Company, its employees, agents and consultants in connection with the Company's application to MDV for financing, are true, complete, accurate and valid.

9. That the Company has fully disclosed all information, facts and circumstances which the Company knows or should reasonably know and which might reasonably be expected to influence MDV in deciding whether to provide financing to the Company.

[4] The plaintiff alleged that they had relied on the statutory declaration and had approved the loan application of RM10 million to Digital Integrated System Sdn Bhd. The letter of offer dated 11 January 2008 reads as follows:

Digital Integrated System Sdn Bhd
Plot 21, Technoplex, Medan Bayan Lepas
Taman Perindustrian Bayan Lepas
Phase IV, 11900
Pulau Pinang.

Attention : Mr. Dustin Cheah Yew Keat
Group Managing Director

Dear Sir,

Letter Of Offer
Credit Facility: Revolving Project Loan Of The Principal Amount Of Up To Ringgit Malaysia Ten Million (RM10,000,000) Only

Malaysia Debt Ventures Berhad ("MDV") is hereby pleased to offer Digital Integrated System Sdn Bhd (the "Borrower") a credit facility subject to the following terms and conditions:

1. The Borrower

Digital Integrated System Sdn Bhd (Company No. 385791-X)
Plot 21, Technoplex, Medan Bayan Lepas
Taman Perindustrian Bayan Lepas
Phase IV, 11900
Pulau Pinang.

2. The Facility

Revolving Project Loan of the principal amount of up to Ringgit Malaysia Ten Million (RM10,000,000) only (the "Facility"); comprising the following:

Project Line 1: RM10,000,000 for principal only ("PL1").

Please note that MDV reserves the right at MDV's discretion to vary the principal amount or the available limit of the above Facility (or any part thereof) with further project line(s) of such amount(s) as shall be determined by MDV from time to time

3. Terms And Conditions Of The Facility

(a) The specific terms and conditions of the Facility are set out in Annexure 1 attached hereto, which said terms and conditions shall be construed as an integral and essential part of this letter. These terms and conditions may be amended, varied, modified, supplemented or adjusted by MDV from time to time.

(b) The first and subsequent disbursement(s) of any principal amount of the Facility shall be made by MDV after deducting therefrom upfront the relevant interest payable as set out herein and such other cost, fees and charges incurred in order for MDV to grant the Facility.

4. Security For The Facility

The Facility shall be secured by, *inter alia*, the following (collectively, the "Security Documents", and each, a "Security Document"):

(a) Facilities Agreement;

(b) Corporate Guarantee from DIS Technology Holdings Berhad (Company No. 585429-V);

(c) Negative Pledge by the Borrower in favour of MDV;

(d) Such other security(ies) and/or document(s) as is/are more particularly set out in Annexure 1 hereof; and

(e) Any other securities that MDV may from time to time at its absolute discretion require from the Borrower.

5. Conditions Precedent

The following conditions precedent must be satisfied by the Borrower before the first drawdown of the Facility:

(a) all the Security Documents shall have been duly executed by the Borrower, the parties providing security as stated in Clause 4 above and MDV, and where applicable, stamped and presented/lodged/filed for registration or registered with all relevant registries, authorities and/ agencies;

(b) all appropriate searches shall have been carried out on the Borrower and/or officers/shareholders or person(s) providing security at the appropriate registry(ies), authorities and/or agencies by MDV or by MDV's solicitors and that the results of such searches are satisfactory to MDV;

(c) the receipt by MDV of all documents, confirmations and/or undertaking from the Borrower and/or its officers/shareholders as MDV or MDV's solicitors consider(s) necessary;

(d) the payment by the Borrower of all fees including the fees of all professional consultants and advisors appointed by MDV in relation to the Facility, charges, stamp duties, registration fees, costs, expenses and other payments whatsoever as may be instructed to be paid by MDV or MDV's solicitors;

(e) the receipt by MDV of the original copies of the written consents from Malayan Banking Berhad, RHB Bank Berhad and EON Bank Berhad in form and substance acceptable to MDV for the Borrower to do the following:

(i) to accept the Facility offered by MDV; and

(ii) to create all the security(ies) stated in this Letter of Offer in relation to the Facility in favour of MDV including all the security more specifically set out in **Annexure 1** hereof to secure the Facility

(f) the compliance by the Borrower of:

(i) all MDV's requirements in respect of the operation of the Facility; and

(ii) all other conditions as may be deemed appropriate by MDV and/or MDV's solicitors;

(g) such other conditions precedent as more particularly set out in Annexure 1 hereof.

6. General Terms And Conditions

The grant of the Facility is also subject to the general terms and conditions as set out in **Annexure 2** attached hereto, which said terms and conditions shall be construed as an integral and essential part of this letter. These terms and conditions may be amended, varied, modified, supplemented or adjusted by MDV from time to time.

Please note that should the Borrower fail to accept the offer herein, by returning to us the two (2) sets of duplicate copies of this letter duly signed/accepted by the Borrower's authorised signatory(ies) together with a certified true copy of the Borrower's Board of Directors' resolution authorising the acceptance of the Facility upon the terms and conditions contained herein and authorising the appointment of the authorised signatory(ies), on or before **31 January 2008**, or on or before such other extended date(s) as may be prescribed by MDV at MDV's absolute discretion, our offer herein shall lapse absolutely and be of no further effect.

Please also note that the offer herein shall not be construed as creating a binding obligation on the part of MDV to grant the Facility, and MDV reserves the right at its absolute and unfettered discretion to withdraw the offer herein at any time if in the opinion of MDV (which option shall be final and shall not be questioned on any ground whatsoever), the grant of the Facility is not viable and/or not in the best interest of MDV.

Yours faithfully,
Malaysia Debt Ventures Berhad

-sgn-

Ma'amor Che Alias	Amir Hamzah Mohd Shariff
Senior Vice President	Vice President, Credit Marketing

[5] By a Supplementary Letter of Offer dated 25 September 2008 the plaintiff agreed to increase the loan to RM20 million. The parties executed the following documents:

(a) Assignment of Sales Proceeds dated 1 December 2008;

(b) First Supplemental Agreements dated 1 December 2008;

(c) Corporate guarantee dated 1 December 2008, between the plaintiff and IDS Technology Holdings Berhad;

(d) Negative Pledge Agreement dated 1 December 2008.

The Plaintiff's Case

[6] The main basis of the plaintiff's claim is that the defendant fraudulently misrepresented certain facts with regards to the borrower in the statutory declaration (SD) that was submitted. The plaintiff had relied on the representations made in the SD and had approved the initial loan of RM10 million and followed by an approval to increase the loan to RM20 million.

[7] According to the plaintiff, the defendant and the borrower breached the terms of the Negative Pledge and the Deed of Assignment when they assigned the purchase order to Al Rajhi Bank on 28 April 2008 for a loan of RM25 million. The breach was only remedied by the borrower and the defendant six months after it was made known to the plaintiff. In a meeting that was held on 1 July 2010 the plaintiff discovered that certain facts were misrepresented and fraudulently stated by the defendant in its loan application,

> Plaintiff telah menjumpai beberapa fakta yang disalahnyata dan dimasukkan oleh Defendan dalam permohonan untuk pinjaman kepada syarikat Peminjam.

[8] The deed of assignment between the plaintiff and the borrower stipulated that the payment of the loan must be made by Starlight Marketing Limited directly to the project account of the plaintiff. The defendant did not disclose that the payments were made directly to DIS accounts. As a result of the misrepresentation the plaintiff had suffered damages and loss.

[9] PW1, Nazli Abdul Hamid, Naib Presiden, Pengurusan Kredit explained in his witness statement:

> Dokumen perjanjian antara Plaintif dengan Peminjam memperuntukkan bahawa pembayaran pinjaman mestilah dibuat oleh Starlight Marketing Limited secara terus kepada akuan projek MDV namun Defendan dengan pengetahuan penuh telah menyembunyikan fakta sebenar bahawa pembayaran kontrak tidak dibuat ...
>
> Akibat dari tindakan Defendan tersebut Plaintif telah mengalami kerugian, kerosakan dan kehilangan yang tidak diperbaiki oleh peminjam...

[10] In his answer to Q38 he said,

> Defendan adalah Pengarah Urusan Syarikat Digital Integrated System Sdn Bhd tersebut yang selalu berurusan dengan Plaintif. Bagi tujuan untuk mendapatkan pinjaman tersebut, Defendan yang mewakili Peminjam membuat representasi secara fraud bahawa Peminjam berada di dalam kedudukan kewangan yang kukuh dan semua surat cara yang dikemukakan untuk menyokong permohonan tersebut adalah benar.

Berdasarkan siasatan Plaintif menemui beberapa fakta yang telah disalahnyata oleh Defendan dalam permohonan untuk pinjaman dengan Plaintif.

Defendan telah membekalkan maklumat yang tidak benar mengenai operasi syarikat peminjam sedangkan Defendan mempunyai pengetahuan penuh bahawa fakta tersebut adalah tidak benar. Defendan juga telah memprejudiskan sekuriti yang dicagarkan kepada Plaintif dengan mencagarkan pesanan belian kepada bank Al-Rajhi Banking & Investment Corporation (Malaysia) Berhad dan mempunyai pengetahuan bahawa pembayaran pesanan belian yang dibiayai oleh Plaintif dibayar terus oleh Starlight Marketing ke akaun DIS di Hong Kong dan DIS di Malaysia dan bukanlah ke dalam akaun sepertimana yang diperuntukan di bawah Perjanjian.

Siasatan yang dilakukan pada sekitar tahun 2010 menunjukkan bahawa tindakan Defendan adalah bertentangan dengan akuan berkanun yang diistiharkan oleh Defendan di dalam perakuan berkanunnya yang diikrarkan pada 7.11.2007 terutama di perengggan 9 Part A, di muka surat 21 Ikatan Dokumen Bahagian B. Saya Petik pernyataan tersebut seperti berikut:

> 9. That the Company fully disclosed all information facts and circumstances which the Company knows or should reasonably know and which might reasonably be expected to influence MDV in deciding whether to provide financing to the Company.

Defendan telah membuat kenyataan palsu apabila mengakui di dalam Perakuan Berkanunnya bahawa kesemua maklumat, dokumen dan representasi yang dikemukakan oleh Defendan dan/atau syarikat Digital Integrated System Sdn Bhd adalah benar, lengkap, tepat dan sah dan telah memperdaya Plaintif untuk meluluskan pinjaman tersebut dan Plaintif telah mengeluarkan amaun sebanyak RM20,000,000.00 untuk manfaat Syarikat Digital Integrated System Sdn Bhd tersebut, yang mana Plaintif tidak akan meluluskan permohonan pinjaman oleh Defendan yang mewakili Peminjam sekiranya fakta-fakta sebenar tidak diselindungkan dan/atau disembunyikan dan/atau dipalsukan oleh Defendan menerusi kenyataan dan akujanji Defendan di dalam Akuan berkanun tersebut dan selanjutnya telah memprejudiskan sekuriti yang dicagarkan kepada Plaintif dan menyebabkan kerugian kepada Plaintif.

[11] PW1 further stated in his witness statement that the defendant had made false statement when he declared in the SD that all the information that he has given are true and accurate:

> Defendan telah membuat kenyataan palsu apabila mengakui di dalam Perakuan Berkanunnya bahawa kesemua maklumat, dokumen dan representasi yang dikemukakan oleh Defendan dan/ atau syarikat Digital Integrated System Sdn Bhd ...

[12] Hazlina Abd Kadir (PW2), an executive with the plaintiff, explained the procedures of disbursing the loan. PW3, Dato' Derrick Fernandez is the Executive Chairman of the company that was appointed and instructed by the plaintiff to conduct an investigation as to the borrower company after the borrower breached the loan agreement:

> Initially to review the file and there from to negotiate for recovery of the RM22.3 million owed by the borrower.

[13] At the end of the investigation PW3 concluded that the defendant had deliberately misrepresented certain facts about the borrower company in the SD and the application form with the intention to mislead the plaintiff. He however did not specify which information or documents which contained the alleged misrepresentation.

The Defendant's Case

[14] It is the defendant's case that the plaintiff did not plead the particulars of the alleged fraudulent misrepresentation. Order 18 r. 12(1) of the Rules of Court 2012 clearly provides that every pleading must contain the necessary particulars of the misrepresentation. The plaintiff failed to provide the particulars of the fraudulent misrepresentation despite an order from the Learned Senior Assistant Registrar dated 30 August 2012 to do so before 4 September 2012.

[15] The plaintiff ought to have particularised the alleged fraudulent misrepresentation and state the alleged misrepresentation that was relied on. The plaintiff merely made an inference of the fraudulent misrepresentation.

[16] DW1, Tay Kim Hong, a financial advisor with 20 years experience attached to Messrs Wan Nadzir & Co was instructed to conduct an audit investigation on DIS Technology Holdings Bhd. The firm's appointment was approved by the Securities Commission.

[17] DW1 explained how the investigative audit was conducted including going to the premises of the borrower as well as looking through all the books and records. They had examined the sales transactions, purchases to determine whether they were genuine. DW1 also confirmed that they had requested information and confirmations from third party including banks, creditors and debtors as well as going through internal and external documents. The audit conducted revealed that there was no fraud committed as alleged.

[18] DW2, Koay Ling Gnoh, a former employee of DIS Technology Holdings Bhd, had assisted in the management operations. She was called to explain the procedures in respect of delivery orders and invoices as well purchase orders. The defendant also gave evidence and in his witness statement he said that all the Digital Executives including himself were extensively interviewed by the plaintiff. They were told that the plaintiff would draw up a special loan package for DIS after independent inquiries were made. The defendant also informed the court that the plaintiff's executives had in fact visited the Hong Kong to meet with Digital Integrated System staff in 2009.

Issues And Findings

[19] Abdul Malik bin Ishak J in *Lee Cheong Fah v. Soo Man Yoh @ Saw Man Yoke* [1996] 2 BLJ 356 said that there are two types of misrepresentations namely,

> ... (a) innocent misrepresentation and (b) fraudulent misrepresentation. An innocent misrepresentation is false but made by the representor with reasonable grounds for believing it to be true at the time when it was made and at the time when the contract was entered into. The usual remedy for an innocent representation would be rescission of contract. On the other hand, fraudulent misrepresentation is said to be a false representation made knowingly or without believing its truth, or recklessly, carelessly whether it is true or false. The fraud element that

creeps in is certainly actionable in tort for deceit, whilst the contract element allows for repudiation (where the contract is executed) or for damages (where the contract is said to be executed). ...

[20] In *Balakrishnan Devaraj & Anor v. Admiral Cove Development Sdn Bhd* [2010] 7 CLJ 152 at p. 160 Justice Abdul Malik Ishak said:

... a misrepresentation must be a false statement of existing fact which is normally made prior to, or during the preliminary stages of a contract and is made with the intention of and has the effect of inducing the party to whom it is made to enter into the contract with the representor.

[21] His Lordship Justice Gopal Sri Ram (as His Lordship then was) in *Sim Thong Realty Bhd v. Teh Kim Dar* [2003] 3 CLJ 227 explained:

Now the elements of an actionable misrepresentation are well settled. They are set out as follows in Professor's Mckendrik's *Contract Law*, 3rd Edition, a leading work on the subject:

A misrepresentation may be defined as an unambiguous, false statement of fact which is addressed to the party misled and which materially induces the contract. This definition may be broken down into three distinct elements. The first is that the representation must be unambiguous false statement of fact, the second is that it must be addressed to a party misled and third is that it must be material inducement to entry into the contract.

At p. 238:

Now, it is trite that the expression "misrepresentation" is merely descriptive of a false pre-contractual statement that induces a contract or other transaction. But it does not reflect the state of mind of the representor at the relevant time. The state of mind of the representor at the time he made the representation to the representee varies according to the circumstances of each case. It may be fraudulent. It may be negligent. Or it may be entirely innocent, that is to say, the product of the mind that is free from deceit and inadvertence ... Put another way, a misrepresentation is innocent "where the representor believes the assertion to be true and consequently has no intention of deceiving the

representee". (Chershire & Fifoot, *Law of Contract*, 6th Edition) It is in particular of state of mind of the representor that determines the nature of the remedy available to the representees.

[22] In the instant case the plaintiff did not particularised the alleged fraudulent misrepresentation. Paragraph 5 of the statement of claim merely made a general statement reads as follows,

> Bagi tujuan untuk mendapatkan pinjaman tersebut, Defendan yang mewakili Peminjam membuat representasi secara fraud bahawa Peminjam berada di dalam kedudukan kewangan yang kukuh dan semua surat cara yang dikemukakan untuk menyokong permohonan tersebut adalah benar.

[23] In the case of *Frederick Ting Hua San v. Ban Guan Thye Sawmill Sdn Bhd* [2005] 5 CLJ 477 where the defence of misrepresentation was also in issue Faiza Tamby Chik J had this to say:

> The appellant's submission that breaches of the purported representations and warranties has resulted in misrepresentations thus invoking Contracts Act 1950, ss. 95 1950 is wholly misconceived. Nowhere in the statement of defence nor in the affidavit - in - opposition has the second defendant positively asserted misrepresentation on the part of the plaintiff much less provided any particulars of misrepresentation. The Supreme Court Practice 1991, Vol. 1, Part 1 at p. 308 para 18/12/23 on misrepresentation states:
>
> > Particulars of any misrepresentation must be contained in the pleading. The statement of claim must show the nature and extent of each alleged misrepresentation (*Newport etc, Co v. Paynter* [1887] 34 Ch D 88) by whom and to whom it was made and whether verbally or in writing in the latter case identifying the document.
> >
> > The appellant has pleaded in his statement of defence two misrepresentations, namely in respect of the credit limit of the guarantee to RM50,000 only and in respect of the understanding that all directors of the first defendant company and the parent company shall execute similar guarantees. These allegations are also mainly repeated in the appellant's affidavit - in - opposition. The main thrust of the appellant's submission is that there are sufficient material facts on misrepresentation to invalidate the guarantee by virtue of Contracts Act 1950, ss. 95 1950. I think the

misrepresentation though alleged in the defence is without sufficient particulars as required under O. 14 r. 18(1)(a) SCR 1980. In addition, the affidavit - in - opposition merely repeats the misrepresentation alleged in the defence without condescending upon particulars. The point is the degree of sufficiency of particulars needed in the pleadings depends on the nature of the facts alleged and ought to be such that it will not put the other party to a surprise in the trial. The allegations of misrepresentation in the defence and the evidence adduced in the affidavit have indeed raised several questions on material facts which, *inter alia*, by way of illustration the question is, & Who, on behalf of the plaintiff company made these representations? & Till to date this material fact to which the appellant claims personal knowledge has not been disclosed as evidence in any affidavit at all. Therefore, the appellant has failed to raise a triable issue on the purported misrepresentations, and consequently it appears wholly unjustified now for the appellant to be given an opportunity to call for *vica voce* evidence to prove these misrepresentations.

[24] Reverting to the case at hand and guided by the principles in the aforementioned cases I found that no particulars of the alleged misrepresentation were given by the plaintiff in its statement of claim. The plaintiff only made reference to the statutory declaration by the defendant in particular to paras. 8 and 9:

8. That all information, documents and oral representations furnished or to be furnished by or on behalf of the Company, its employees, agents and consultants in connection with the Company's application to MDV for financing, are true, complete, accurate and valid.

9. That the Company has fully disclosed all information, facts and circumstances which the Company knows or should reasonably know and which might reasonably be expected to influence MDV in deciding whether to provide financing to the Company.

[25] It is settled law that fraudulent misrepresentation or fraud must not only be pleaded but also particularised in the pleadings. It is also trite law that the standard of proof for fraud is one of beyond reasonable doubt (Re: *Saminathan v. Pappa* [1980] 1 LNS 174 and by Supreme Court in *Chu Choon Moi v. Ngan Sew Tin* [1985] 1 LNS 134).

[26] The plaintiff failed to particularise the information, documents and oral representations that they had relied on when considering and finally approving the loan. The plaintiff's witnesses also failed to explain when they gave evidence the information or the documents that they had relied on, in inducing them to approve the loan.

[27] PW4, Azlina Nasabu, gave evidence confirming that as part of the due diligence conducted she had visited the borrower's factory in Pulau Pinang before the loan was approved to check and verify the information given. She met the key personnel of the company and found that everything was satisfactory.

[28] The loan to finance the purchase orders in favour of Al Rajhi was taken by DIS Holdings Berhad and not Digital Integrated System Sdn Bhd. The assignment was a general assignment and not a specific assignment. When told of the breach by the plaintiff the borrower took steps to rectify the breach. Based on the facts and evidence the plaintiff had approved and granted the loan to the borrower after conducting due diligence in the course of ordinary business.

[29] From the evidence adduced at the trial, both oral and documentary, it is clear that there is not an iota of evidence to show any taint of fraudulent misrepresentation by the defendant.

Conclusion

[30] After considering the submissions as well authorities and based on the entirety of the evidence both oral and documentary I find that the plaintiff has not proved its case on a balance of probabilities and I accordingly dismiss the plaintiff's claim against the defendant with costs.